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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: FEB 17 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. On November 3, 1996, the applicant presented a U.S. birth certificate belonging to another individual to immigration authorities at O'Hare Airport in Chicago, Illinois, falsely claiming to be a United States citizen. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his U.S. citizen wife and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See* Decision of the District Director, dated January 6, 2003.

On appeal, the applicant contends that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] decision appears to have considered superficial consequences. The applicant provides a brief statement in support of this assertion.

The record also contains an affidavit from the applicant's wife, dated July 13, 2001; an affidavit from friends of the applicant, dated July 13, 2001; a letter from Reverend [redacted] dated June 23, 2001; a copy of the U.S. birth certificate for the applicant's child; copies of Illinois identification cards for the applicant and his spouse; photographs of the applicant and his child; receipts for medical visits to the pediatrician treating the applicant's child; a copy of the divorce decree for the applicant's wife and her previous spouse; a copy of the U.S. birth certificate for the applicant's wife and financial and tax documents for the applicant and his wife. The entire record was considered in rendering a decision on this application.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Effective April 1, 1997, a section 212(i) waiver of the bar to admission is not available to an applicant who has falsely claimed to be a United States citizen under section 212(a)(6)(C)(ii). In the present application, the applicant falsely claimed to be a U.S. citizen prior to enactment of the provision and therefore, his Application for Waiver of Grounds of Excludability (Form I-601) will be considered.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant asserts that numerous studies "have clearly documented the irreparable damage a child may experience if he/she were to be separating [sic] from a parent." The AAO notes that the record contains no further substantiation or copies of the referenced studies. The AAO finds that references to unnamed, undocumented studies cannot form the basis of a finding of extreme hardship nor can speculative statements such as those made by the applicant regarding the hardship his child "may experience" as a result of his inadmissibility. Further, the AAO notes that hardship suffered by the applicant's child is irrelevant to waiver proceedings under section 212(i) of the Act and will only be considered in so far as the hardship impacts the applicant's wife, the qualifying relative in this application.

The applicant additionally asserts that his child "does not suffer from any chronic disease" and provides medical receipts demonstrating that "medical expenses are paid out of pocket because of insurance procedures." The applicant states that his child has remained in good health owing to good medical care. While the AAO recognizes that good medical care contributes to the health of a child, the record does not

demonstrate that good medical care is the sole basis for the health of the applicant's child. The applicant's wife states that the applicant pays for expenses associated with their child's pediatric care in cash because his physician does not accept insurance. *See* Affidavit of [redacted] dated July 13, 2001. The applicant's wife implies that her child's well being is contingent on continuing to visit the particular physician referenced. The record does not establish that the pediatrician currently treating the applicant's child is the only physician available to provide competent medical care to the applicant's child. The record does not demonstrate that the applicant's wife cannot continue to pay the current pediatrician in the applicant's absence and the record does not demonstrate that the employer of the applicant's wife does not provide adequate health care coverage for the applicant's spouse and child.

The applicant contends that his wife would be unable to provide for their son and her child from a previous marriage in the absence of the applicant. The applicant cites the need to pay for private school and private daycare. The record demonstrates that the applicant's wife maintains a lucrative career and is able to provide for her children. *See* W-2 Forms and Individual Income Tax Returns for [redacted] The record demonstrates that the applicant's wife receives child support payments from her previous spouse to assist in the costs associated with raising her child from that relationship. *See* Marital Settlement Agreement, dated July 29, 1997. Further, the AAO finds that the need to change types of schooling or day care as a result of the loss of the applicant's income does not rise to the level of extreme hardship. The record does not establish, beyond the assertions of the applicant, that the applicant's wife is unable to financially provide for her children in the absence of the applicant. Further, the record does not establish that the applicant is unable to continue providing financially for his child from a location outside of the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.